



Italian Revenue Agency clarifies the tax treatment of income received by non-resident musicians for concerts held abroad

The Italian Revenue Agency issued Ruling No. 354/2020 to clarify the tax treatment of income received by two musicians (tax resident of Germany and Switzerland respectively) engaged by an Italian foundation ("Foundation") to perform in two concerts to be held outside the Italian territory.

Under the agreement in place between the Foundation and the musicians, the latter were entitled to receive a remuneration in connection with the participation to the concerts. It was also agreed that the remuneration was not due in the case of cancellation of the concerts (e.g. in the event of *force majeure*) and that all preparatory activities (including concert rehearsals) had to be carried in Italy (subject to the guidelines provided by the Foundation regarding the place and the time of the rehearsals). Neither a specific remuneration, nor a reimbursement of the related expenses, was provided in the contracts with regard to the rehearsals.

The Italian Revenue Agency took the view that the income paid to the musicians was to be regarded as income from artistic performance carried out entirely outside the Italian territory regardless of the days of presence in Italy for concert rehearsals, as such not subject to Italian taxation in the hands of the non-resident taxpayers.

The Italian Revenue Agency clarified that such conclusion was not affected by the fact that concert rehearsals were carried out in Italy because such activities (i) had a purely preparatory function *vis-à-vis* the main performance, i.e. the concert exhibition, and hence it was not possible to regard them as separate activities and (ii) were not specifically remunerated (as also confirmed by the fact that the musicians were not entitled to any payment in the case of cancellation of the concerts).

The conclusion is in line with prior rulings issued by the Italian Revenue Agency (e.g. see Ruling no.79/E of 16 June 2006). It is also consistent with the clarifications provided in the OECD Commentary on Article 17. In this respect, the OECD Commentary emphasizes the need to assess the existence of a close connection between the income and the performance (that "will generally be found to exist where it cannot be reasonably be considered that the income would have been derived in the absence of a performance of these activities" § 9, 3rd sentence; see also (§ 9.3, 7th sentence with regard to the somehow similar example of a bonus to be paid to a cyclist). The close connection requirement can be found with regard to the exhibitions in the absence of which the musicians would not be entitled to receive a remuneration.

For further information: **Maisto e Associati**

Milan

Piazza F. Meda 5
20121
T: +39.02.776931

Rome

Piazza d'Aracoeli 1
00186
T: +39.06.45441410

London

2, Throgmorton Avenue
EC2N 2DG
T: +44.207.3740299

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